IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

TUESDAY, THE 20TH NOVEMBER 2007 / 29TH KARTHIKA 1929

CRP.No. 1172 of 2004()

AGAINST THE ORDER DATED 25/10/2003 IN EP. 8/1994 IN LAR.44/1987 of ADDL.SUB COURT,KOTTAYAM

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REVN. PETITIONER: PETITIONER/DECREE-HLDER:

SMT.MARY GEORGE, VETTIKKAT HOUSE,
NJALLAMATTAM WARD, CHENAPADI,
KANJIRAPPALLY.

BY ADV. SRI.P.S.GEORGE
SRI.TOMY P.T.

RESPONDENTS: JUDGMENT/DEBTOR:

THE STATE OF KERALA, REPRESENTED BY
THE DISTRICT COLLECTOR, KOTTAYAM.

BY ADV. GOVT.PLEADER SMT. R.BINDU

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 20/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N.KRISHNAN, J

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C.R.P. No.1172 OF 2004

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Dated this the 20th day of November 2007

ORDER

Heard both sides. The order under challenge is against disallowance of the amount under Section 23(1-A) of the Land Acquisition Act and also the interest on solatium. The court below after taking into consideration the entire facts came to the conclusion that there is an excess payment of Rs.70,189.36 and therefore directed the claimant to redeposit the amount in favour of the State. Learned counsel for the petitioner had submitted before me that the court has not taken into consideration the decision of the Apex Court reported in ***Sunder v. Union of India(2001(3) KLT 489 SC).*** The Apex Court in the said decision found that the amount mentioned under Section 23(1-A) forms part of the market value of the property and therefore the person is entitled to claim that amount as well. This aspect has not been properly considered by the executing court and therefore it requires consideration.

2. So far as interest on solatium is concerned, a Constitution Bench of the Apex Court in ***Gurpreet Singh v. Union of India(2006) 8 SCC 457)*** has made it clear and held that "it is well settled that an execution court

cannot go behind the decree. If, therefore, the claim for interest on solatium had been made and the same has been negatived either expressly or by necessary implication by the judgment or decree of the Reference Court or of the appellate court, the execution court will have necessarily to reject the claim for interest on solatium based on Sunder on the ground that the execution court cannot go behind the decree". In this case the appellate court, viz., this court had clarified that the claimant will not be paid interest on solatium. So, in the light of the declaration by the court the question of interest on solaltium does not arise for consideration in the light of the decision of the Constitution bench referred to above. But the question of entitlement under Section23(1-A) desires to be considered.

Therefore I set aside the order of the executing court and direct the said court to consider about the same after hearing both sides and dispose of the matter in accordance with law. Parties are directed to appear before 19.12.2007.

Writ petition is disposed of as above.

M.N.KRISHNAN, JUDGE

Cdp/-